IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1243 OF 2005

Jitendra Natwarlal Patel & Ors. ...Applicants.

V/s

Vaishali J. Patel & Ors. ...Respondents.

Ms. Bhavana Shah for the applicants.

Mr. D.P. Adsule for the respondents.

CORAM: V.M.KANADE,J.
DATE: 3rd March, 2005

P.C.

1. Applicants are original accused Nos. 1, 2 and 3 and the respondent No.1 is the original complainant. Applicants have filed this Criminal Application under section 482 of the Code of Criminal Procedure for quashing the complaint which is filed by respondent No.1 under sections 406, 420, 498A of the Indian Penal Code which was registered at Dahisar Police Station vide C.R. No.2 of 2004. Notice was issued to respondent No.1. In the application, it is stated in para 11 that applicant No.1 and respondent No.1 have reconciled their matrimonial differences and disputes and that the applicant has returned the entire property of respondent No.1 which was with him as per the report dated 6/11/2004 filed by Dahisar Police Station. It is further stated that both the parties

have filed a petition for divorce by mutual consent in the family court which is pending. It is further submitted by the learned counsel for the applicants that the respondent No.1 has agreed to withdraw the complaint which was filed by her. Respondent No.1, on notice, has appeared in this Court personally along with her counsel and has filed an affidavit in which she has stated that the petitioner is her husband and that her marriage with the petitioner has irretrievably broken down and that she had settled the dispute with the petitioner and both of them had agreed to obtain divorce by mutual consent. She has stated that the petitioner has decided to pay permanent alimony by issuing two demand drafts and that they have agreed upon the Consent Terms which are to be filed along with the Petition for divorce by mutual consent to be filed in the Family Court. She has stated that she did not wish to prosecute the petitioner and his in-laws.

2. It is now settled law that neither the Magistrate nor the High Court has power to compound the offence which is otherwise noncompoundable as per the provisions of Section 320 of the Criminal Procedure Code. However, the provisions of section 320 of the Criminal Procedure Code do not curtail the inherent

powers of the High Court under section 482 of the Criminal Procedure Code. In the present case, I am satisfied that both the parties have amicably settled their dispute and if the complaint is not quashed, respondent No.1 would be deprived of the benefit in terms of compensation and permanent alimony which she would have been otherwise entitled. If the complaint is not quashed, respondent No.1 will have to undergo rigours of filing maintenance application under section 24 of the Hindu Marriage Act which may take quite some time till actual benefits percolates to her. Under these circumstances, I am of the view that this is a fit case where the complaint should be quashed and set aside. Accordingly, the complaint which is registered at Dahisar Police Station is quashed and set aside. Criminal Application is allowed in terms of prayer clause (a).

V.M. KANADE, J.